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Support

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-206019

DATE: February 4, 1982

MATTER OF: Coonrod and Walz Construction Co., Inc.

DIGEST:

1. The determination whether to set aside a procurement under section 8(a) of the Small Business Act is a matter for the contracting agency and SBA and will not be reviewed by GAO absent a showing of fraud or bad faith on the part of Government officials.
2. Under our Bid Protest Procedures, GAO considers the propriety of an award or proposed award, and not, as here, general allegations that past and present procurements discriminate against large business firms.

Coonrod and Walz Construction Co., Inc. (C&W), protests the Veterans Administration's (VA) decision to issue a solicitation limited to small business firms for a nursing facility project to be built at the Veterans Hospital in Wichita, Kansas. C&W contends that this solicitation is either a small business set-aside or is under the Small Business Administration's (SBA) 8(a) program and that the VA has discriminated against large businesses in Wichita because all projects past, present and near future are either small business set-asides or section 8(a) set-asides.

The VA has informally advised our Office that the nursing facility project in Wichita was issued under the 8(a) program.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III, 1979), authorizes SBA to enter into contracts with any Government agency with procuring authority and to arrange the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The contracting officer is authorized "in his discretion" to let contracts to SBA upon such terms and conditions as may be agreed upon by

the procuring agency and SBA. In light of this broad discretion, we do not review agency determinations to set aside procurements under section 8(a) unless there is a showing of bad faith or fraud on the part of Government officials. See Maintenance, Incorporated, B-199854, August 27, 1980, 80-2 CPD 155; E-Z Tight, Inc., 59 Com. Gen. 122 (1979), 79-2 CPD 394. No such showing has been made here.

In resolving protests under our Bid Protest Procedures, 4 C.F.R. part 21 (1981), the General Accounting Office will consider only protests involving specific procurement actions, i.e., whether an award or proposed award of a contract complies with statutory, regulatory and other legal requirements. See Markarian Bros. & Associates, B-198355, May 19, 1980. Therefore, to the extent that C&W is protesting in general the propriety of the VA allegedly setting aside all past and present projects as small business set-asides or section 8(a) set-asides, and in view of the above-noted discretion, the matter is not for consideration. See Columbus Jack Corporation, B-179526, March 14, 1974, 74-1 CPD 136.

Accordingly, we dismiss the protest.

Harry R. Van Cleve
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Acting General Counsel